

SPECIAL CRIMINAL APPLICATION No 105 of 1998

Hon'ble MR.JUSTICE A.K.TRIVEDI

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2. To be referred to the Reporter or not? Yes

JJJ

J

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

UNION OF INDIA

Versus

CHAIRMAN, SUAR SANGAM CO.OP. HOUSING SOICETY LTD.

Appearance:

MR YN RAVANI for Petitioners

Respondent No. 1 served

Mrs. B.R. Gajjar, APP for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/03/98

ORAL JUDGEMENT

Heard learned Advocate Mr. Yogesh Ravani for
petitioners and Mrs.B.R.Gajjar, learned APP for
respondent No.2 State. Respondent No.1 absent though

served.

2. The petitioner has challenged legality and propriety of the order passed by the learned Additional Sessions Judge, Ahmedabad (Rural) dated 31st December, 1997, in the proceedings of Misc. Criminal Revision Application No. 264 of 1997, certified copy of which is produced vide Annexure-A.

3. That vide impugned order, the learned Additional Sessions Judge, Ahmedabad (Rural), District Ahmedabad, has rejected the application of the petitioner to condone the delay of 68 days in presenting a Revision Application against the order of Sub-Divisional Magistrate, Ahmedabad District, passed in Inquiry Case No. 9 of 1995 on 28.6.1996.

4. That respondent No.1 is a co-operative housing society registered under the provisions of the Gujarat Co-operative Societies Act, 1961. That the respondent No.1 has agitated a grievance by impugned application to the District Collector under Section 133 of the Cr.P.C. contending that respondent No.1 society has constructed buildings for its members on the land bearing Survey No. 330 - Part of Vejalpur, sim of city Taluka, District Ahmedabad. That the adjacent land to the said land of respondent No.1, is acquired by the present petitioner to construct the residential flats for the accommodation of employees of Post & Telecom Department. It is further contended by respondent No.1 in the application that the petitioner has constructed a compound wall on the boundary line of the buildings of respondent No.1 society. That on account of said wall, there is obstruction to the discharge of rainy water from the land which is causing nuisance to the residents. That the learned City Deputy Collector heard the parties in respect to said application and passed order on 28.6.1996 directing the petitioner to keep some portion of the said wall open so as to discharge the rainy water passing through the society of respondent No.1.

5. That being aggrieved and dissatisfied by the said order of learned City Deputy Collector, present petitioner desired to prefer a Revision Application before the District and Sessions Judge, Ahmedabad (Rural). That such Revision Application ought to have been filed within prescribed period of 90 days from the date of the order which was 28.6.1996. However, the office bearers of the said society established by the petitioner applied for certified copy on 12.9.1996. That the copy was ready on 8.11.1996 and was received on

18.11.1996. That taking into consideration the said period for preparation of certified copy, the present petitioner ought to have presented the Revision Application on 5.12.1996 instead of that there was a delay of 68 days in lodging the Revision Application and thereby the petitioner moved Criminal Misc. Application No. 264 of 1997. That the learned Additional Sessions Judge having heard the same, has disposed of vide impugned order.

6. Shri Yogesh Lakhani, learned Advocate appearing for the petitioner has heavily relied on the observations made by Supreme Court in the matter of SPL. TEHSILDAR, LAND ACQUISITION, KERALA vs. K.V. AYISUMMA reported in JT 1996 (7) SC 204 and has urged that P & T Department being a Department of the Central Government, sanction of Legal Department for filing Revision Application was necessary and as usual government procedure consumes time at decision taking level and thereby learned Additional Sessions Judge ought to have taken a lenient view which is expressed in various judicial pronouncements of this High Court and the Apex Court. It is contended by learned Advocate appearing for the petitioner that the learned Sessions Judge has held that delay caused in presenting the Revision Application against the impugned order is on account of negligence and inaction on the part of the office bearers of petitioner and not in a time consuming decision making process. That such observations of the learned Additional Sessions Judge is unwarranted and in view of the observations made by the Supreme Court in the case of Spl. Tehsildar (supra), this court should allow the present petition and condone the delay by setting aside and quashing the impugned order passed by the learned Additional Sessions Judge, Ahmedabad (Rural), District Ahmedabad.

7. I have carefully gone through the impugned order passed by the Additional Sessions Judge which is produced on record vide running page 12 to 15 as Annexure-A to the petition. That in the matter of Spl. Tehsildar (supra), the Supreme Court has made following observations in para 2 as under :

"It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day to day delay. The transaction of the business of the Government being done leisurely by Officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters

expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filling the appeal. The approach of the Court would be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law laid down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned."

8. Following the dictum of the above stated observations made by the Apex Court, in my opinion, the view expressed by learned Additional Sessions Judge, Ahmedabad (Rural), Ahmedabad while deciding the Misc. Criminal Application No. 264 of 1997 vide impugned order cannot be said to be a correct and reasonable view. Hence, I hold that the impugned order deserves to be set aside and quashed. The delay of 68 days in presenting the Criminal Revision Application along with Misc. Cri. Application No. 264 of 1997 is hereby condoned. Matter is remanded back to the Additional Sessions Judge, Ahmedabad (Rural), District Ahmedabad with direction to take the Revision Application presented by the petitioner along with Misc. Criminal Application No. 264 of 1997 on file and to decide the same in accordance with law.

9. Rule is made absolute accordingly. No order as to costs. Ad interim relief granted earlier stands vacated.

p.n.nair